IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1105/2003
(Inderpal Singh Choudhary Vs. State of Rajasthan & Ors.)

Date of Order : 08/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. B.N.Kalla for the petitioner.

Mr. Ashok Upadhyay, public prosecutor for the State.

Mr. Sandeep Mehta for Mr. Vinod Sharma for the non-petitioners No. 2 to 4.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 25.9.2002 passed by Additional Chief Judicial Magistrate, Ratangarh (Churu) (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offence under Section 420 IPC against the petitioner and issued process.

I have heard learned counsel for the parties and carefully gone through the order impugned.

The facts and circumstances giving rise to the instant

petition are that a complaint was filed by complainant Babu Lal before the trial court which was sent to the police for investigation under Section 156 (3) of the Code. The police filed the FR. A notice to the complainant was served and a protest petition was filed by him. The trial court upon hearing the complainant and upon perusal of the police papers, more particularly, the statement of witnesses, Babulal, Ghanshyam, Radheshyam, Shanker Lal, Sohanlal, Rajuram, Moolchand and Gangadhar prima-facie came to the conclusion that there is ground to proceed against the present petitioner for the offence under Section 420 IPC and accordingly took the cognizance of the offence and issued the process.

Mainly, the contention raised by the learned counsel for the petitioner is that the trial court has not considered the FR submitted by the police.

On perusal of the order impugned, it appears that the trial court has considered the FR papers including the statements of witnesses noticed above and came to the conclusion from the FR papers that the offence under Section 420 IPC is made out against the petitioner.

In M/s India Carat Pvt. Ltd., Vs. State of Karnataka and another AIR 1989 SC 885 Hon'ble Supreme Court held that the Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the

facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under S. 190 (1) (b) and direct the issue of process to the accused.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

This view was reiterated by Hon'ble Supreme Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others (2004) 7 SCC 768 wherein Hon'ble Apex Court held that on the report forwarded by police to the Magistrate that no case made out against accused, the Magistrate can ignore the

conclusion arrived at by the Investigating Officer and can independently apply his mind to the facts emerging from investigation and take cognizance, if he thinks fit by exercising powers under S. 190 (1)(b) Cr.P.C.

Keeping in view the decisions of Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan (supra), M/s India Carat Pvt. Ltd., Vs. State of Karnataka and another (supra) and in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others (supra), I do not find any error in the order impugned warranting interference in the inherent jurisdiction. The petition is therefore, dismissed.

(H.R.PANWAR),J.

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